# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 72

JOHN M. LEHMANN, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER,

vs.

UNITED STATES OF AMERICA, EX REL. BRUNO CARSON OR BRUNO CARASANITI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 27, 1956

CERTIORARI GRANTED NOVEMBER 19, 1956

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1956

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### INDEX

1 **Appendix to Brief of Appellant**—Filed April 5, 1955

In United States District Court, Northern District of Ohio, Eastern Division

No. 30,800

United States of America, ex rel., Bruno Carson or Bruno Carasaniti, plaintiff,

*v.*

J. S. Kershner, Acting Officer in Charge, defendant

Docket Entries

1/22/54. Application for writ of habeas corpus filed.

1/22/54. Order granting alternative writ of habeas corpus returnable February 1, 1954 filed. McNamee, J. Noted 1/22/54.

1/22/54. Writ of Habeas Corpus issued. 2 Copies of application and Order to U. S. Marshal.

1/22/54. Writ of Habeas Corpus retn. & filed. Served 1/22/54. Fees $2.00.

1/25/54. Bond fixed in the amount of $10,000.00. McNamee, J.

1/25/54. Bond filed. (Summit Fidelity & Surety Co.)

1/27/54. Return to Writ of Habeas Corpus and answer to petition for writ filed. Copy mailed January 27, 1954.

2/2/54. Memorandum of Respondent filed. Copy mailed 2/2/54.

2/9/54. Answer to return on writ of habeas corpus by plaintiff filed. Copy acknowledged 2/9/54.

2/9/54. Brief in behalf of relator filed. Copy acknowledged 2/9/54.

2/9/54. Oral hearing on application for Writ of Habeas Corpus begun and concluded; counsel of relator to file amended brief within 10 days, taken under advise-
2 ment, McNamee, J. - Reporter Kitchen.

2/9/54. Defendant's exhibit A received and filed. (file)

2/19/54. Supplemental brief of relator filed. Copy mailed 2/19/54.

3/31/54. Supplemental Memorandum of Respondent filed. Copy mailed 3/31/54.

DOCKET ENTRIES

4/16/54. Supplemental memorandum of respondent filed. Copy mailed 4/16/54.

4/26/54. Memorandum Opinion filed, McNamee, J. (Writ denied) Copies to counsel.

4/27/54. Order that the application for a writ of habeas corpus is hereby denied filed, McNamee, J. Noted 4/27/54. Copies to counsel.

5/3/54. Application setting $10,000 bail pending appeal filed, McNamee, J. Copy served 5/3/54.

5/3/54. Bond pending appeal filed. (Summit Fidelity & Surety Co.)

5/7/54. Motion of Relator for new trial filed. Copy served 5/7/54.

6/24/54. Endorsed ruling overruling motion for new trial. McNamee, J. Copies to counsel.

6/28/54. Order that the relator's motion for a new trial is overruled, McNamee, J. Copies to counsel.

7/23/54. Notice of Appeal by Plaintiff filed. Copy mailed by Clerk to attorney for defendant 7/23/54.

8/13/54. Stipulation & Order extending time for filing record on appeal in U. S. Court of Appeals to and including October 20, 1954, filed, McNamee, J. Noted 8/13/54. Notice waived.

9/29/54. Transcript of proceedings taken 2/9/54 filed.

10/13/54. All of original papers and pleadings of record on appeal mailed to Clerk, U. S. Court of Appeals, Cincinnati, O. (Receipt ack'n. 10/20/54).

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3 IN UNITED STATES DISTRICT COURT

APPLICATION FOR WRIT OF HABEAS CORPUS—Filed January 22, 1954

Now comes Bruno Carson, a. k. a. Bruno Carasaniti, and, in support of his application for Writ of Habeas Corpus, says as follows:

1. That he is now in custody of the Immigration and Naturalization authorities of Cleveland, and is held by them in the County Jail at Cleveland, Ohio.

2. Petitioner is an alien, against whom deportation proceedings have been pending under the Act of February 5th, 1917, and under the Immigration and Nationality Act: Convicted after entry of two crimes involving moral turpitude, blackmail.

3. Petitioner was arrested on January 19th, 1954, without notice and for no reason, while he was out on bail, duly posted and accepted by the Department since March, 1953.

4. The petitioner's appeal from an order of the Hearing Examiner, dated August 31st, was dismissed by the Board of Immigration Appeals on January 19th, 1954.

5. That the hearing conducted by the Hearing Examiner, upon which the order of deportation is based, was biased, prejudicial and unfair, and that the order of deportation was an act of arbitrariness and capriciousness.

6. Petitioner alleges that said hearing was illegal and unconstitutional.

7. That although the charges were based on the law of 1917, particularly the stowaway charge, which carried a statute of limitation of 5 years, and in this case, the right of prosecution for that charge terminated in 1924, both the Hearing Examiner and the Board of Appeals ignored the existence of that law, and arbitrarily found that the petitioner rather comes under the law of 1952—The McCarran Act—although he became a stowaway in 1919.

8. With reference to the criminal charge, it is called to the Court's attention, that in 1945 this very change was contained in a deportation case that was then pending against this petitioner. That Governor Lausche of Ohio then granted a pardon for one of the crimes alleged in the deportation warrant. The Immigration Service accepted that pardon, and terminated the proceedings against this petitioner, and cancelled the Warrant of Deportation then outstanding.

9. The Hearing Examiner now holds that although the Department did accept said pardon by the governor, and terminated the deportation proceedings on October 9th, 1945, because "This pardon was deemed sufficient to meet the provisions contained * * * in the law of 1917 * * *," he now holds that the law of 1952 "supersedes" the law of 1917, and that the new law required a full and unconditional pardon, whereas the old law merely required a

pardon, and that such pardon was acceptable, even though it might have been conditional.

10. Hearing Examiner arbitrarily overruled counsel's objection to the manner of the hearing, because same was conducted by the Hearing Examiner, who was an employee of the Immigration Service. Also, that the repeal by Congress of Sections 1004, 1006 and 1007 of Administrative Procedure Act, affecting only the Immigration Service, was unconstitutional, and constituted a discrimination.

11. That there is nothing in the law of 1952 (McCarran Act) that provides for the cancellation of prior laws, and it is the contention of this petitioner, that the McCarran Act is effective as of December 24th, 1952, and not at any time before that date.

12. That at the hearing before the Board of Appeals, the Board arbitrarily refused to entertain a request for discretionary relief, although counsel made such request.

13. That the hearing was unfair; the action of the Attorney General, in issuing the warrant of arrest and or deportation, was arbitrary and capricious; is therefore contrary to law, and in violation of the Constitution of the United States.

WHEREFORE your petitioner prays that a Writ of Habeas Corpus issue forthwith, directed to said J. S. Kershner, or his deputies, commanding him to have the body of Bruno Carson or Bruno Cavasaniti, together with the cause of such detention, restraint and imprisonment, forthwith before this Court, and that upon hearing of the cause, the Relator be discharged from further custody of the Respondent, or for such other or further relief to which he may be entitled in law or in justice.

Henry C. Lavine, Attorney for Relator.

IN UNITED STATES DISTRICT COURT

RETURN TO WRIT OF HABEAS CORPUS AND ANSWER TO PETITION FOR WRIT—Filed February 9, 1954

Now comes the above named respondent and for a return to the writ of habeas corpus issued by the above entitled court and for answer to the petition for said writ states:

1. The respondent is the Acting Officer in Charge of the Cleveland Office of the Immigration and Naturalization Service, United States Department of Justice.

2. The relator is an alien, a native and citizen of Italy, fifty-two years of age.

3. The relator entered the United States at the port of New York on or about September 4th or 5th, 1919, as a stowaway on the SS "La France"; that he has never been lawfully admitted to the United States for permanent residence nor has his immigration status ever been adjusted to that of a legally resident alien.

4. On January 15, 1936 the relator was convicted in the Common Pleas Court, Cuyahoga County, Ohio of the
6 crime of Blackmail, committed on or about December 11, 1935 and was sentenced to imprisonment in the Ohio State Penitentiary for an indeterminate period and to pay the costs of prosecution.

5. The relator was again convicted on April 25, 1936 in the Court of Common Pleas, Lorain County, Ohio of the crime of Blackmail, committed on or about October 15, 1935 and was sentenced to imprisonment in the Ohio State Penitentiary and to pay the costs of prosecution, said sentence to begin at the expiration of the sentence which he was then serving.

6. The relator was released from imprisonment on or about February 1, 1941.

7. The Governor of the State of Ohio granted the relator a pardon dated July 30, 1945 for the crime of Blackmail for which the relator was convicted in Lorain County, Ohio on April 25, 1936; that said pardon states it was granted "From this time forward, conditioned upon good behavior and conduct and provided that he demeans himself as a law-abiding person and is not convicted of any other crime, otherwise this pardon to become null and void."

8. A warrant of arrest in deportation proceedings was issued against the relator on June 23, 1953 on the following charges: Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to-wit, a stowaway, under Sec. 3 of the Act of Feb. 5, 1917, and, Sec. 241(a)(4) of the Immigration and Nationality Act, in that, he at any time after entry, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to-wit, blackmail and blackmail.

9. The said warrant of arrest was served upon the relator at Cleveland, Ohio on June 24, 1953.

10. The relator was thereafter released from custody on or about the 17th day of July, 1953 under bond in the sum of $10,000.00.

11. The relator was accorded a hearing under the warrant of arrest in deportation proceedings at Cleveland, Ohio on July 17, 1953 before a Special Inquiry Officer of the Immigration and Naturalization Service.

12. By memorandum dated August 31, 1953, the Special Inquiry Officer ordered the relator to be deported in the manner provided by law on the charges contained in the warrant of arrest.

13. The relator appealed to the Board of Immigration Appeals, Department of Justice from the order of the Special Inquiry Officer.

14. The Board of Immigration Appeals by decision dated January 19, 1954 affirmed the order of deportation of the Special Inquiry Officer and dismissed the appeal.

15. A warrant of deportation dated January 19, 1954 was issued directing the deportation of the relator on the charges contained in the warrant of arrest and in the order of deportation.

16. The relator was taken into custody under the outstanding order of deportation on January 19, 1954.

17. Prior to the time the relator was taken into custody, the Immigration and Naturalization Service had received reliable confidential information indicating that relator intended to abscond as soon as he received definite information that the Board of Immigration Appeals had entered a decision adverse to him.

18. At no time during the course of the administrative proceeding did relator or his counsel interpose any objection to the legality or constitutionality of the hearing and no objection was interposed to the manner in which the hearing under the warrant of arrest was conducted.

19. The relator has been accorded a full and fair hearing under the warrant of arrest in deportation proceedings and the order and warrant of deportation are based upon substantial evidence clearly establishing deportability on the grounds heretofore stated.

20. The relator was taken into custody for the purpose of deportation; that arrangements for the deportation of the relator have been completed.

21. The relator is detained in accordance with the Immigration Laws of the United States and the regulations made pursuant thereto.

22. That at the hearing on the petition for a writ of habeas corpus, the respondent will produce the records of the Immigration and Naturalization Service relating to the relator; that said records are made a part of this return and incorporated herein as if fully set forth herein.

WHEREFORE, it is respectfully urged that the writ of habeas corpus herein be dismissed and the relator remanded to the custody of the Immigration and Naturalization Service.

J. S. Kershner, Acting Officer in charge Immigration and Naturalization Service, Cleveland, Ohio. John J. Kane, Jr., United States Attorney, Robert C. Grisanti, Asst. United States Attorney.

(Verification omitted.)

9 IN UNITED STATES DISTRICT COURT

TRANSCRIPT OF PROCEEDINGS

had on application for writ of habeas corpus taken before Hon. Charles J. McNamee, Judge of said court, on Tuesday, the 9th day of February, 1954.

APPEARANCES:

On behalf of the Relator: Henry C. Lavine, Esq.
On behalf of the Respondent: Robert C. Grisanti, Assistant U. S. Attorney, and Herman I. Branse, Esq.

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(2) (Thereupon arguments had by the respective counsel.)

STIPULATIONS

Mr. Lavine: Your Honor, I believe Government counsel would agree with the Court's permission to stipulate that this warrant of arrest that was issued last summer, I believe in June, against Bruno Carasaniti was not based on any conviction of crime to the knowledge of the department which would void this pardon. It was not based on any conviction of any new crime.

The Court: Of any crime subsequent to the crime for which he was sentenced.

Mr. Lavine: And it was also stipulated that as stated by the Board of Immigration Appeals that the fact as stated on page 2 pertaining to the acceptance by the Board of the pardon which was given to Bruno by Governor Lausche was accepted by the Board and that the proceedings then were dropped.

The Court: Page 2 of what?

Mr. Lavine: Page 2 of the Board of Immigration Appeals opinion.

The Court: Do you have that here as part of the immigration record?

(3) Mr. Grisanti: Yes, your Honor.

The Court: Stipulated that the pardon was accepted as being a pardon defined by the Act then in effect?

10 Mr. Lavine: That's right.

The Court: All right. What else?

Mr. Lavine: Those are the two I believe we agreed on.

Mr. Grisanti: That is all. We so stipulate.

The Court: Then I take it, Mr. Lavine, there is no other evidence upon which the Relator desires to adduce proof?

Mr. Lavine: Well, we would have liked the opportunity to present testimony, but there is no other conflict in the evidence as——

The Court: Well, I want the record to be clear on this. You have not been denied any opportunity to present any evidence at all that may be relevant to the issues raised by the application for this writ.

Mr. Lavine: Well, the only other evidence I wanted to present to the Court was the testimony of the Relator as to the kind—as to what he has been doing and to his life here and (4) what the situation was pertaining to his present status.

The Court: Well, is there anything in the record that indicates anything to the contrary?

Mr. Lavine: Well, there was an allegation in the return by the Government that, as I said before, he was ready to pull up stakes.

The Court: Well, that relates only to his possible flight.

Mr. Lavine: Yes.

The Court: Well, that has nothing to do with this. But is there anything in the record of the hearing before the immigration authorities or the Immigration Board of Appeals that tends to show that he has acted in such a manner as to warrant the action being taken or that he has acted otherwise than as a good law abiding citizen?

Mr. Lavine: Outside of that allegation, no, there is nothing else.

The Court: Is there anything else that you desire to submit proof on?

Mr. Lavine: I don't think so at this time, your
11 Honor.

The Court: May the record show that (5) there is nothing in addition to the stipulations upon which the Relator desires to submit proof?

Mr. Lavine: Yes, your Honor. I do want additional time.

The Court: Yes. How much time do you want?

Mr. Lavine: I should have a week or ten days.

The Court: All right. If the Government wants to reply after receiving it—do you wish to reply to the brief that Mr.

Lavine has filed? Suppose you defer doing that until I receive the additional brief. I haven't read this one yet and then you may file a reply to both this brief and the additional brief filed by Mr. Lavine.

The court will suspend until 2:00 o'clock.

(Thereupon court adjourned.)

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IN THE UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Filed April 26, 1954

McNAMEE, *District Judge.*

A warrant of arrest in deportation proceedings was issued against the relator on June 23, 1953 on the following charges: Sec. 241(a)(1) of the Immigration and Nationality Act, in that at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to-wit, a stowaway, under Sec. 3 of the Act of Feb. 5, 1917, and Sec. 241(a)(4) of the Immigration and Nationality Act, in that, he at any time after entry, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to-wit, blackmail and blackmail.

The said warrant of arrest was served upon the relator at Cleveland, Ohio on June 24, 1953, and he was accorded a hearing in deportation proceedings at Cleveland,
12 Ohio on July 17, 1953 before a Special Inquiry Officer of the Immigration and Naturalization Service.

By memorandum dated August 31, 1953, the Special Inquiry Officer ordered the relator to be deported in the manner provided by law on the charges contained in the warrant of arrest.

The relator appealed to the Board of Immigration Appeals, Department of Justice, from the order of the Special Inquiry Officer.

The Board of Immigration Appeals by decision dated January 19, 1954, affirmed the order of deportation of the Special Inquiry Officer and dismissed the appeal.

The essential facts are not in dispute and are correctly set forth in the memorandum opinion of the Board of Im-

migration Appeals. I am also persuaded that the reasons stated and the authorities cited in the memorandum of the Board are decisive against the relator's claim for relief.

Therefore, upon the facts and for the reasons stated in the opinion of the Board of Immigration Appeals the writ is denied.

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IN THE UNITED STATES DISTRICT COURT

ORDER DENYING APPLICATION FOR WRIT OF HABEAS CORPUS

Filed April 27, 1954

Upon consideration it is ordered that the Application for Writ of Habeas Corpus is hereby denied.

Charles J. McNamee, United States District Judge.

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13-14 BEFORE THE BOARD OF IMMIGRATION APPEALS

United States of America
Department of Justice
Immigration and Naturalization Service

No. E-076976

WARRANT OF DEPORTATION

To: Acting Chief, Border Patrol, Detention and Deportation Division, Buffalo, N. Y.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

WHEREAS, after due hearing before an authorized Special Inquiry officer of the United States Immigration and Naturalization Service, and upon the basis thereof, an order has been duly made that the alien BRUNO DOMINICO CORASANITI alias BRUNO CARSON who entered the United States at New York, N. Y. on or about the 4th day of September, 1919, is subject to deportation under the following provisions of the laws of the United States, to wit: Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of

entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, a stowaway, under sec. 3 of the Act of Feb. 5, 1917; and Sec. 241(a)(4) of the Immigration and Nationality Act, in that, he at any time after entry, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit, Blackmail and Blackmail.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to take into custody and deport the said alien pursuant to law, at the expense of the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1954" including the expenses of an attendant, if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 19th day of January, 1954. At Buffalo, New York.

A. J. Karnuth, District Director, Buffalo District.

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15 BEFORE THE BOARD OF IMMIGRATION APPEALS

U. S. Department of Justice
Board of Immigration Appeals

DECISION—January 19, 1954

File: E-076976—Buffalo.

In re: BRUNO DOMINICO CORASANITI alias BRUNO CARSON.
In Deportation Proceedings.

In Behalf of Respondent: Henry C. Lavine, Esquire, 1410 Williamson Building, Cleveland, Ohio (Heard: December 1, 1953), Sidney B. Rawitz, Service Representative before the Board (Also heard).

Charges:

Warrant: Immigration and Nationality Act—Excludable by law existing at time of entry, to wit: A stowaway, under Section 3 of the Act of February 5, 1917.

Immigration and Nationality Act—Convicted after entry of two crimes involving moral turpitude, to wit: Blackmail, and blackmail.

Lodged: None.

Application: Termination of proceedings or remand for character investigation.

Detention Status: Released on bond in the sum of $10,000.00.

This is an appeal from an order of the special inquiry officer dated August 31, 1953 directing the respondent's deportation.

The respondent is a 52-year-old married male, a native and citizen of Italy, who testified that his only entry into the United States occurred at the port of New York about September 4 or 5, 1919 as a stowaway on the SS La France. He admitted that at the time of his entry he was not inspected by an immigrant inspector. On January 15,
16 1936 he was convicted in the Common Pleas Court, Cuyahoga County, Ohio of the crime of blackmail committed on or about December 11, 1935, and was sentenced to imprisonment in the Ohio State Penitentiary for an indeterminate period and to pay the costs of prosecution. On April 25, 1936 he was again convicted in the Court of Common Pleas, Lorain County, Ohio of the crime of blackmail committed on or about October 15, 1935 and was again sentenced to imprisonment in the Ohio State Penitentiary and to pay the costs of prosecution, said sentence to begin at the expiration of the sentence which he was then serving. The respondent testified that he was sentenced to imprisonment for one to five years for each of said crimes and that he was released from imprisonment on February 1, 1941. The record contains a pardon dated July 30, 1945 signed by the Governor of Ohio granting a pardon for the crime of blackmail for which the respondent was convicted in Lorain County, Ohio in April 1936. The pardon states that it was granted to the respondent "from this time forward, conditioned upon good behavior and conduct and provided that he demeans himself as a law-abiding person and is not convicted of any other crime, otherwise this pardon to become null and void."

It appears that deportation proceedings previously were instituted against the alien, predicated on the same two crimes which furnish the basis of the instant proceedings.

By order of this Board dated October 9, 1945, the outstanding order of deportation previously entered on February 26, 1937 was withdrawn and the proceedings terminated upon the respondent's submission of the pardon referred to. The special inquiry officer has nevertheless found the respondent deportable in these proceedings under the Immigration and Nationality Act on the warrant charges and has ordered his deportatoin. Counsel has raised a number of objections to this order, which we shall now consider.

At the outset of the hearing, counsel urged that the hearing was illegal because it did not conform to the requirements of Sections 5, 7 and 8 of the Administrative Procedure Act, and failed to comply with the requirements of due process of law. We have previously considered and rejected that argument. *Matter of M-*, A-2669541, BIA; June 1, 1953, Int. Dec. 442. Since the hearing in the instant case was conducted in accordance with Section 242(b) of the Immigration and Nationality Act which constitutes the sole and exclusive procedure for conducting deportation proceedings, it meets the requirements of due process. *U.S. ex rel Marcello* v. *Ahrens*, 113 Fed. Supp. 22 (D.C., La.—1953). See also *Barber* v. *Yanish*, 196 F(2d) 53 (CA-9), cert. denied 344 U.S. 817. We therefore consider counsel's objection to the hearing procedure to be without merit.

Counsel further contends that since the respondent was not deportable under the Immigration Act of February 5, 1917, as amended, the proceedings under the Immigration and Nationality Act were illegal since as applied to the respondent, they were conducted under a law which
17 constitutes ex post facto and retroactive legislation and is therefore unconstitutional. This argument involves a consideration of the position of the respondent under the respective Acts in question.

The respondnt was not amenable to deportation on the stowaway charge under the Act of 1917, as amended, because the prior proceedings were not instituted within five years after entry, as expressly required by Section 19(a) of that Act. He was not deportable under the 1917 Act on the criminal charge because in accordance with the prevailing administrative interpretation, the pardon which he had received was construed as meeting the requirements of Section 19(a) of said Act pertaining to pardoned aliens.

The Court traced the origin and development in our immigration and naturalization statutes of this savings provision, 348 U. S. 528, at 531-535. It was the Court's conclusion that "The whole development of this general savings clause, its predecessors accompanying each of the recent codifications in the field of immigration and naturalization, manifests a well-established congressional policy not to strip aliens of advantages gained under prior laws. The consistent broadening of the savings provision, particularly in its general terminology, indicates that this policy of preservation was intended to apply to matters both within and without the specific contemplation of Congress." 348 U. S. at 535.

In the *Shomberg* case the Court held that the savings provisions of section 405 of the Act did not preserve the alien's previously acquired status from the operation of section 318 of the Act. The Court found that the relevant savings clause in that case was the one contained in section 405(b). That section, like section 405(a), consists of a general savings provision which applies unless "otherwise specifically provided." Since section 318 expressly states that its provisions shall be applicable "notwithstanding the provisions of section 405(b) of this Act," the Court concluded that here was an instance where the Act had "otherwise specifically provided" and where the savings clause therefore was superseded. In passing, the Court pointed out four other places in the 1952 Act where Congress had "clearly manifested its intent that certain policies should override the otherwise broad and pervasive principle of the savings clause." 348 U. S. at 547; see footnote 5. In each instance cited the statute expressly states that a given provision shall apply "notwithstanding" the provisions of the saving clause.[3]

The *Menasche* and the *Shomberg* opinions thus clearly teach that the savings clause is to be interpreted as protecting status acquired under prior legislation, unless the intent to withdraw that protection is manifestly clear. It was held in the *Shomberg* case that such intent is clear where it is specifically provided that a provision shall be

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[3] See also *United States* v. *Stromberg*, . . . F. (2d) . . . (5 Cir., November 15, 1955).

(Here follows 1 Photolithograph, side folios 24-25)

However, the provisions of the Immigration and Nationality Act under which the instant proceedings were brought are different from those of the Act of 1917, as amended. Section 241(a)(1) of the Immigration and Nationality Act provides for the deportation of any alien who "at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry". Stowaways were among the classes excludable at entry under Section 3 of the Act of February 5, 1917, as amended. The fact that respondent entered the United States as a stowaway in 1919 is immaterial, for Section 241(d) of the Immigration and Nationality Act expressly states:

> Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all the aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.

In view of this language, and the fact that there is no provision for a statute of limitations with respect to any deportation charge contained in the Immigration and Nationality Act, it is apparent that the respondent now falls within the purview of Section 241(a)(1) of said Act.

With respect to the criminal charge, reference to the statute will indicate that here, too, a change has been effected. Section 241(a)(4) of the Immigration and Nationality Act renders deportable any alien "who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial". Section 241(d) of the Immigration and Nationality Act, previously referred to, makes this section applicable regardless of when the conviction occurred. Its language is sufficiently broad to include not only new classes of deportable aliens, but also to eliminate preexisting bars
18 to deportation. *U.S. ex rel Marcello* v. *Ahrens*, 113 F. Supp. 22 (D.C. La., 1953); *U.S. ex rel Barile* v.

effective "notwithstanding" the terms of the savings
32 clause. No such clear manifestation of intent is apparent in the present case.

We conclude that Carson's status of nondeportability is protected by section 405 of the Act, since the statutory provisions upon which appellee relies do not constitute such specific exceptions to section 405 as are contemplated in that section in order to make it inapplicable. In reaching this conclusion we have been aided by the reasoning of a recent decision directly in point by Judge McNamee of the Northern District of Ohio, in *United States ex rel. Dominic Sciria* v. *John H. Lehmann*, decided October 7, 1955. In a characteristically clear and thorough opinion, Judge McNamee concluded that section 405(a) of the Act operated to protect the status of an alien entering as a stowaway in 1922 who had acquired immunity to deportation by the passage of time under the 1917 Act. It was Judge McNamee who denied the writ of habeas corpus in the present case. In the *Sciria* opinion he expressly stated his conclusion that he had been in error in the present case, pointing out that the savings clause had not been relied upon by Carson in the hearing before him. While Judge McNamee refrained from commenting upon the other ground for deportation relied upon in the present case, i.e., the fact that the pardon Carson received was not an unconditional one, the reasoning of his opinion in the *Sciria* case would also clearly lead to the conclusion we have reached that Carson's status of nondeportability on this ground is likewise preserved by section 405(a) of the Act.

Other federal courts have uniformly given a broad interpretation to section 405 in varying factual situations. See *United States ex rel. De Luca* v. *O'Rourke*, 213 F. (2d) 759 (8 Cir., 1954); *Yanish* v. *Barber*, 211 F. (2d) 467 (9 Cir., 1954);[4] *Ex parte Robles-Rubio*, 119 F. Supp. 610 (N. D.

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[4] "It would appear from the language of this reservation that Congress, as a measure of policy or precaution, intended to preserve the effectiveness of all subsisting proceedings, orders, or judgments fixing or determining individual statuses, obligations, liabilities, or rights; and for this purpose to have continued in force the statutes or parts thereof under which such status, obligation, liability or right became fixed or determined." 211 F. (2d), at p. 470.

Before the Board of Immigration Appeals

In the name and by the Authority of

# THE STATE OF OHIO

## FRANK J. LAUSCHE

*Governor of said State*

**To all to whom these Presents shall come, Greeting:**

**Whereas,** at the April term of the Court of Common Pleas held in and for the County of Lorain, in the

**Whereas,** at the April term of the Court of Common Pleas held in and for the County of Lorain, in the year of our Lord One Thousand Nine Hundred and thirty-six; Bruno Corasaniti was convicted of the crime of Blackmail and sentenced by said Court to imprisonment in the Ohio Penitentiary for a term of 1 to 5 years; and

**Whereas,** the Pardon of said Bruno Corasaniti has been recommended by Ohio Pardon and Parole Commission

**Therefore,** by virtue of the authority vested in the Governor by the Constitution and Statutes of the State, I do hereby grant to the said Bruno Corasaniti a **Pardon,** from this time forward, conditioned upon good behavior and conduct and provided that he demeans himself as a law abiding person and is not convicted of any other crime, otherwise this Pardon to become null and void.

**In Testimony Whereof,** I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed, at Columbus, this 30th day of July, in the year of our Lord, one thousand nine hundred and forty-five.

**Whereas,** the Pardon of said Bruno Corasaniti has been recommended by Ohio Pardon and Parole Commission

**Therefore,** by virtue of the authority vested in the Governor by the Constitution and Statutes of the State, I do hereby grant to the said Bruno Corasaniti a **Pardon,** from this time forward, conditioned upon good behavior and conduct and provided that he demeans himself as a law abiding person and is not convicted of any other crime, otherwise this Pardon to become null and void.

**In Testimony Whereof,** I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed, at Columbus, this 30th day of July, in the year of our Lord, one thousand nine hundred and forty-five.

Frank J. Lausche

By the Governor: Edward J. Hummel
Secretary of State.

24-25

*Murff*, (D.C. Maryland, November 10, 1953). Since moral depravity inheres in the crime of blackmail that crime involves moral turpitude. *Libarian* v. *State Bar*, 239 P(2) 865 (Cal. 1952). Unless, therefore, the respondent can claim the benefit of the pardon received in 1945, he falls within the scope of Section 241(a)(4).

Since a pardon is an act of grace and mercy, inherent in the pardoning power is the right to make the pardon absolute or conditional. *United States* v. *Wilson*, 32 U.S. (7 Pet.) 150 (1833). A conditional pardon is one to which a condition is annexed, the performance of which is necessary to the validity of the pardon. *Fehl* v. *Martin*, 155 Oregon 455, 64 P. (2d) 631 (1937). Conditional pardons may be those involving conditions precedent or conditions subsequent. If there is a condition precedent, such condition must be performed before the pardon can take effect. If the pardon contains a condition subsequent, such condition, if violated, causes the pardon to become null and void. *State ex rel Gordon* v. *Zangerle*, 136 Ohio State 371, 26 N.E. (2) 190 (1940); *The Attorney General's Survey of Release Procedures*, Vol. 3, P. 205 (1939). On the revocation of a pardon for a breach of one of its conditions, the legal status of the person pardoned must be regarded as being the same as it was before the pardon was granted. *State ex rel Gordon* v. *Zangerle*, (supra).

It has been held that pardons granted by the Governor of Ohio [1] containing conditions similar to that in the instant case were valid pardons under the Act of 1917, as amended, on the ground that such pardons, having been granted on conditions subsequent which might never occur, should be regarded as removing the ground of deportability resulting from the crimes. See *Matter of B—*, A-5224813 and *Matter of B—*, 56083/976 (B.I.A. 1946), referred to in *Matter of B—*, A-5829477, 3 I.&N. Dec. 551 at pp. 553 and 554.

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[1] Article 3, Section 11 of the Constitution of Ohio adopted in 1851 provides that the governor "shall have power, after conviction, to grant reprieves, commutations and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulatoins, as to the manner of applying for pardons, as may be prescribed by the law.

26 IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ARGUMENT AND SUBMISSION—October 19, 1955

(omitted in printing)

IN UNITED STATES COURT OF APPEALS

JUDGMENT—Filed December 17, 1955

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court in this cause be and the same is hereby set aside and the case remanded to the District Court for further proceedings consistent with the views expressed in the opinion herein.

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[fol. 27] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12361

UNITED STATES OF AMERICA, ex rel. BRUNO CARSON or BRUNO CARASANITI, *Appellant,*

v.

J. S. KERSHNER, Officer in Charge, *Appellee*

Appeal from the United States District Court for the Northern District of Ohio, Eastern Division.

OPINION—Decided December 17, 1955

Before MARTIN, MILLER and STEWART, Circuit Judges

STEWART, Circuit Judge. A warrant of arrest in deportation proceedings was issued against the relator, Bruno Carson, in June of 1953. After a hearing before a Special

When the previous deportation proceedings against the respondent were terminated on October 9, 1945, that action was taken because Section 19(a) of the Act of 1917, as amended, imposed no restriction on the type of pardon that would be sufficient to render an alien immune to deportation. Section 241(b) of the Immigration and Nationality Act, on the other hand, provides as follows:

> The provisions of subsection (a)(4) respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a *full and unconditional* pardon by the President of the United States or by the Governor of any of the several states * * *. (Underscoring supplied).

19 We interpret this section as constituting a change in the existing law. In construing a statute, Congress is presumed to mean what it says and in the absence of any ambiguity in the statute, it is to be construed according to its plain terms. *United States Lines* v. *Shaughnessy*, 101 F. Supp. 61, aff'd 195 F. (2d) 385 (C.A. (2d), 1952)). It is also presumed that Congress was aware of the existing statutes, as well as the interpretations thereof; and that a change in the statutory language was intended to achieve a change in legislative result. *Sutherland, Statutes and Statutory Construction*, Volume 2, Section 450 (1943 Edition). In restricting the benefits of Section 241(b) to aliens who have obtained full and unconditional pardons, Congress has unequivocally removed from the benefits of that section any pardon which does not meet those requirements. Whether a pardon contains a condition precedent or condition subsequent is no longer material. So long as the pardon is conditional, it does not come within the provisions of the section. It is our conclusion, therefore, that a conditional pardon such as that obtained by the respondent is ineffective to prevent deportation under Section 241(a)(4) of the Immigration and Nationality Act.

Having determined that the respondent falls within the scope of Sections 241(a)(1) and 241(a)(4) of the Immigration and Nationality Act, we now turn to counsel's argument that an attempt to apply those sections to the respondent would be unconstitutional because he has obtained

vested rights under the Act of 1917, as amended. We find this argument to be without merit. It is well settled that a prior administrative determination is not res judicata in the technical sense. *Pearson* v. *Williams,* 202 U.S. 281 (1906). It is also established that Congress may enact legislation to render aliens deportable because of past conduct. *U. S. ex rel Eichenlaub* v. *Shaughnessy,* 338 U.S. 521 (1950). Since deportation proceedings are not criminal in nature, the proscription against ex post facto laws does not apply. *Harisiades* v. *Shaughnessy,* 342 U.S. 580 (1951); *Mahler* v. *Eby,* 264 U.S. 32 (1923). We have examined the cases cited by the respondent's counsel and do not find them to be applicable to this proceeding. Whatever limitations may exist in other fields upon the enactment of retroactive legislation, no such prohibition exists with respect to deportation proceedings. *Harisiades* v. *Shaughnessy,* (supra); *U. S. ex rel Marcello* v. *Ahrens,* (supra). As was stated by the court in *Kaloudis* v. *Shaughnessy,* 18 F. (2d) 489, at p. 490:

> The interest which an alien has in continued residence in this country is protected only so far as Congress may choose to protect it; Congress may direct that all shall go back, or that some shall go back and some may stay; and it may distinguish between the two by such tests as it thinks appropriate.

If the respondent has any rights which are preserved, they must be preserved by Congressional mandate. Since the Act of February 5, 1917, as amended, was repealed by Section 403(a)(13) of the Immigration and Nationality Act, only those matters are preserved which fall within the scope of Section 405(a) of the Immigration and
20 Nationality Act. The pertinent portion of that section provides as follows:

> Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any

Cal., 1954);[5] *Yanish* v. *Barber*, 128 F. Supp. 240 (N. D. Cal., 1955);[6] *Petition of Pringle*, 122 F. Supp. 90 (E. D. Va., 1953), aff'd per curiam *sub nom. United States* v. *Pringle*, 212 F. (2d) 878 (4 Cir., 1954). On occasion, this uniformly broad interpretation has led to a result adverse to the alien. See *United States* v. *Mathes-Friedman*, 115 F. Supp. 261 (E. D. N. Y., 1953); *United States ex rel. Circella* v. *Neelly*, 115 F. Supp. 615, 625-626 (N. D. Ill., 1953).

It should be pointed out that the argument advanced by the appellee would make the savings clause all but meaningless. The effect of his argument is that where there has been a specific *change* in the law relating to deportation, the savings clause has no application. Yet it is only when there has been such a change that the savings clause is of any moment at all. As pointed out in the *Shomberg* opinion, "Only where something in the new law introduces a change, thereby affecting one's status under the old law, is the savings clause called into play. Only then is a specific exception to § 405 required." 348 U. S. at 546.

On the other hand, the conclusion we have reached does no violence to the provisions of section 241(d) of the Act; 8 U. S. C. A., Section 1251(d), making the provisions as to deportability contained in section 241 applicable even though the alien entered the United States or that the other facts which make him deportable occurred prior to the passage of the Act. It must be remembered that section 403 of the 1952 Act expressly repealed the predecessor statutes, among them specifically the 1917 and 1924 Acts.[7] The purpose and effect of section 241(d) is therefore to remove any

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[5] "The saving clause in the 1952 Act is one of unusual breadth as is appropriate in a statute which effects a complete revision of the immigration and nationality laws of the nation. The breadth of the savings clause is indicative of the Congressional awareness that the 1952 Act would inevitably have unforeseen effects upon preexisting statuses and conditions, and the Congressional desire to avoid such effects in so far as possible." 119 F. Supp., at p. 613.

[6] "It is difficult to imagine a more inclusive savings clause than the one just quoted." 128 F. Supp., at p. 242.

[7] 66 Stat. 279.

Inquiry Officer of the Immigration and Naturalization Service he was ordered to be deported in the manner provided by law on the charges contained in the warrant of arrest. Following an unsuccessful appeal to the Board of Immigration Appeals he sought a writ of habeas corpus in the district court. He is here on an appeal from the district court's order denying the writ.

Carson is about fifty-four years old. He was born in Italy and entered the United States as a stowaway in 1919. Under the Immigration Act of February 5, 1917, then in effect, deportation proceedings could have been brought against him at any time within five years after his entry as a stowaway. No such proceedings were brought, and relator thereafter became immune from deportation on the stowaway charge under then existing law.[1]

28 In 1936 Carson was convicted in Ohio courts of two separate offenses of blackmail and was sentenced to a prison term of one to five years upon each conviction. After his release from prison in 1941 deportation proceedings were commenced against him under a warrant of arrest issued in 1937, based upon these two criminal convictions. In 1945 the outstanding order of deportation was withdrawn and the proceedings were terminated when the Governor of Ohio granted a conditional pardon for the second of his two convictions. This pardon was granted to Carson "From this time forward, conditioned upon good behavior and conduct and provided that he demeans himself as a law-abiding person and is not convicted of any other crime, otherwise this pardon to become null and void." It is conceded that the pardon granted to Carson was sufficient to confer immunity to deportation under the law then in effect.[2]

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[1] Section 19 of the Immigration Act of February 5, 1917, 39 Stat. 874, 889; 8 U. S. C. (1934 Ed.), Section 155, provided: "At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law . . ." shall be deported. Stowaways were among the classes excluded at the time of appellant's entry under Section 3 of the 1917 Act, 39 Stat. 876; 8 U. S. C. (1934 Ed.) Section 136(1).

[2] Section 19(a) of the Immigration Act of 1917, as amended, 54 Stat. 671; 8 U.S.C. (1946 Ed.), Section 155(a),

> status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect, but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein,* hereby continued in force and effect. (Underscoring supplied).

We note that the scope of the Savings Clause is limited by the underscored phrase "unless otherwise specifically provided". Since Congress has specifically provided under Section 241(d) of the Immigration and Nationality Act for the deportation of aliens falling within the purview of Sections 241(a)(1) and 241(a)(4) of the Act, regardless of when the basis of deportability arose, whatever immunity to deportation the respondent had under the Act of 1917 was lost upon the repeal of that statute. The conclusion reached herein is amply supported by judicial and administrative decisions in similar situations. Thus, it has been held that the Immigration and Nationality Act is effective to create new classes of deportable aliens. *Matter of M—*, (supra); *U. S. ex rel Marcello* v. *Ahrens,* (supra); *U. S. ex rel Barile* v. *Murff,* (supra). It has also been held that the Immigration and Nationality Act has effectively removed bars to deportation existing under the Act of February 5, 1917, as amended, where such bars were based upon a statute of limitations (*Matter of I—*, E-25308, B.I.A. July 21, 1953, Int. Dec. 469); or upon a timely recommendation against deportation, (ibid); or upon a legislative pardon. (*Matter of R—*, E-080924, B.I.A. January 14, 1954, Int. Dec. ———). We therefore conclude that the special inquiry officer properly found the respondent deportable on the warrant charges.

In the Notice of Appeal filed by counsel one of the grounds of error specified is that the special inquiry officer failed to inquire of the respondent whether he wished to apply for discretionary relief. Although this issue was not specifically raised upon the oral argument, counsel did state that the alien has completely reformed, and he therefore requested that the case be remanded to the field to conduct an appropriate investigation. Under 8 C.F.R. 242.53(c),

doubt that the provisions of the Act as to deportation shall have retrospective as well as prospective application insofar as they are not superseded by the savings provisions of section 405. For example, we can assume without deciding that section 241(a)(1); 8 U. S. C. A., Section 1251(a)(1), would serve to make an alien deportable who entered the United States as a stowaway subsequent to July 1, 1924.[8]

The Immigration and Nationality Act is lengthy and complex. If the interplay of its here relevant sections is not entirely free from doubt, the result we have reached
34 is we think consistent with "our duty 'to give effect, if possible to every clause and word of a statute.'" *United States* v. *Menasche*, 348 U. S., at 538-539. Moreover, if there be deemed to exist any reasonable doubt as to whether Congress intended to make an alien deportable, that doubt should be resolved in his favor. *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10 (1948).

The order of the district court is set aside and the case is remanded for further proceedings consistent with the views expressed in this opinion.

35-41 Petition for rehearing covering 8 pages filed January 19, 1956. Omitted from this print, it was denied and nothing more by order January 30, 1956.

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[8] The Immigration Act of 1924, 8 U. S. C. A., Section 201, et seq., effective July 1, 1924, did not contain a limitation period on deportability. Section 14 of the Immigration Act of 1924, 43 Stat. 162; 8 U. S. C. (1934 Ed.), Section 214. Therefore, an alien entering as a stow--ay after that date could acquire no immunity to deportation by the passage of time. Although that section has now been repealed by the 1952 Act, such a stowaway would presumably be deportable by reason of the cited sections of the 1952 Act.

So far as the record shows, Carson has been a law-abiding person since his release from the penitentiary in 1941. He is married to a native born citizen and is the father of four native born children, two of them dependent minors. He is a carpenter and builder, earning about $6,000 a year.

The current deportation proceedings were initiated under the provisions of the Immigration and Nationality Act, effective December 24, 1952, 66 Stat. 163. They are based upon Carson's entry as a stowaway thirty-six years ago, and upon his two criminal convictions almost twenty years ago. Though conceding that Carson had acquired a status of nondeportability prior to the passage of the 1952 Act, appellee contends that Carson has now become deportable by virtue of the provisions of that statute.

The claim that Carson is deportable by reason of having entered as a stowaway is based upon Section 241(a)(1) of the 1952 Act, 66 Stat. 204; 8 U. S. C. A., Section 1251 (a)(1). That section provides: "Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney-General, be deported who—(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry." As to Carson's deportability by reason of the two 1936 convictions despite his conditional pardon for one of them, appellee relies upon Section 241(a)(4) and Section 241(b) of the 1952 Act, 8 U. S. C. A., Section 1251(a)(4) and 8 U. S. C. A., Section 1251(b). The first of these sections provides in part: "Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—(4) . . . at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct. . . ." The second of the two sections provides in part: "The provisions of subsection (a)(4) of this section respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted

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then in effect, provided: "The provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned. . . ."

advice as to discretionary relief is left to the sound judgment of the special inquiry officer. We do not consider the failure to give such advice as constituting reversible error, where as here, the alien was represented by counsel at the hearing and had a full opportunity to apply for discretionary relief at that time. Since no application for suspension of deportation or any other discretionary relief was submitted at the hearing, the relief issue is not
21 properly before us. *Matter of M—*, E-086054, B.I.A. October 9, 1953, Int. Dec. 486. To remand the case for investigation would, therefore, serve no purpose.

Since we find no error in the order of the special inquiry officer directing deportation, the appeal will be dismissed.

Order: It is ordered that the appeal be and the same is hereby dismissed.

Thos. G. Finucane, Chairman.

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22 BEFORE THE BOARD OF IMMIGRATION APPEALS

WARRANT
For Arrest of Alien

United States of America
Department of Justice
Immigration and Naturalization Service
Buffalo, New York

No. E-076976

To any officer in the service of the United States Immigration and Naturalization Service.

Whereas, from evidence submitted to me, it appears that the alien BRUNO CARSON alias BRUNO DOMENICO CORASANITI who entered this country at New York, New York, ex SS "La France" on the 2nd day of September, 1919 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry he was within one or more of the classes of aliens excluda-

42 IN UNITED STATES COURT OF APPEALS

ORDER DENYING REHEARING—Filed January 30, 1956

The petition for rehearing is denied.

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IN UNITED STATES COURT OF APPEALS

STIPULATION FOR SUBSTITUTION OF PARTY-APPELLEE—Filed February 16, 1956

It is hereby stipulated and agreed by and between the respective parties hereto that the name of John M. Lehmann be substituted for that of J. S. Kershner as Officer in Charge.

(S) Henry C. Lavine, Attorney for Plaintiff-Appellant, Sumner Canary, U. S. Attorney, (S) Eben H. Cockley, Assistant U. S. Attorney.

Approved: (S) Potter Stewart, Circuit Judge.

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43 Clerk's Certificate of foregoing transcript omitted in printing.

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44 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 72

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 19, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1957 413608 747

a full and *unconditional* pardon by . . . the Governor of any of the several States. . . ." (Emphasis added.)

As to each of the grounds upon which the proposed deportation is based, appellee also calls our attention to Section 241(d) of the 1952 Act; 8 U. S. C. A., Section 1251(d). That section provides: "Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a) of this section, notwithstanding (1) that any such alien entered the United States prior to June 27, 1952, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a) of this section, occurred prior to June 27, 1952."

In the district court it was contended that since Carson was not deportable under the law as it existed prior to the effective date of the 1952 Act, that statute, insofar as it sought to make his previous conduct grounds for deportation, was an ex post facto law and therefore violative of Article I, Section 9, of the Constitution. In a brief memorandum incorporating the findings and reasoning of the Board of Immigration Appeals, the district court rejected this contention and denied the writ.

In this respect the court's conclusion was entirely correct, and supported by unambiguous authority. "And whatever might have been said at an earlier date for applying the *ex post facto* Clause, it has been the unbroken rule of this Court that it has no application to deportation." *Galvan* v. *Press*, 347 U. S. 522, at 531 (1954). "That aliens remain vulnerable to expulsion after long residence is a practice that bristles with severity. But it is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state. Such is the traditional power of the Nation over the alien and we leave the law on the subject as we find it." *Harisiades* v. *Shaughnessy*, 342 U. S. 580, at 587-588 (1952). "The interest which an alien has in continued residence in this country is protected only so far as Congress may choose to protect it; Congress may direct that all shall go back, or that some shall go back and some may stay; and it may distinguish between the two by such tests as it thinks appropriate." *United States ex rel. Kaloudis* v. *Shaughnessy*, 180 F. (2d) 489, 490 (2 Cir., 1950). So if the question here

ble by the law existing at the time of such entry, to wit, a stowaway, under sec. 3 of the Act of Feb. 5, 1917, and, Sec. 241(a)(4) of the Immigration and Nationality Act, in that, he at any time after entry, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit, blackmail and blackmail.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1953." Authority has been granted for release under bond in the sum of $10,000.00.

For so doing, this shall be your sufficient warrant. Witness my hand and seal this 23rd day of June, 1953.

R. G. Haberstroh, Chief, Investigation and Deportation Section.

23 Office at Cleveland, Ohio

Date June 24, 1953

WARRANT FOR ARREST OF
Bruno Carson alias Bruno Domencio Corasaniti

Served by me at Cleveland, Ohio on June 24, 1953, at 2:15 p.m. Alien was then informed as to cause of arrest, the conditions of release, advised as to right of counsel and furnished with a copy of this warrant.

ARTHUR H. LAUENDIEN, Investigator.

Alien detained at County Jail, Cleveland, Ohio at Service expense.

were one only of the power of Congress to deport Carson, the answer would seem clear that that power exists.

The unanswered question in this case, however, is not what Congress had the power to do, but what it did do. As to that, the above-cited statutory provisions, standing alone, would appear to give a clear answer, and require affirmance of the district court's order denying the writ of habeas corpus. But these provisions do not stand alone.

Section 405 of the 1952 Act, 8 U. S. C. A., Section 1101, note p. 156, contains a broad general savings clause. This clause provides in material part as follows:

> "(a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of . . . any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such . . . statutes [sic], conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. . . ."

This section therefore preserves Carson's status of nondeportability, "unless otherwise specifically provided" in the Act. It is appellee's contention that the Act does "otherwise specifically provide," in the above-cited sections upon which he relies. Relator insists that the quoted sections do not "otherwise specifically provide." Upon the resolution of that issue depends the disposition of this appeal.

The scope of the savings clause has recently been examined by the Supreme Court in two cases decided the same day, *United States* v. *Menasche*, 348 U. S. 528 (1955) and *Shomberg* v. *United States*, 348 U. S. 540 (1955). Though both cases involved the naturalization rather than the deportation provisions of the 1952 Act, the analysis the
31 opinions make of the savings clause is significantly helpful in determining the questions at issue in the present case.

In the *Menasche* case it was held that the savings clause operated to protect the alien's previously acquired status.